

REMARKS-General

The amended independent claim 1 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. The amended claim 1 is submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

Response to Rejection of Claims 1-20 under 35USC103

The Examiner rejected claims 1-20 over Murray in view of no cited art. Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained thought the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Murray which is qualified as prior art of the instant invention under 35USC102(b) are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

Desirability Suggestion

The Examiner rejected claims 1-20 over Murray (U.S. 6,324,769), but Murray's patent fail to provide the configuration of the tape measure as claimed in claims 1 to 20 in the claimed invention, wherein the instant invention includes distinctive structural features that the Murray's patent fails to suggest as follows:

- (i) the ruler blade having a **width in the flattened configuration** thereof having a dimension within **a range of 41-42mm** (as claimed in claim 1);
- (ii) **a height in the concave-convex configuration** of the ruler blade having a dimension within **a range of 9-12mm** (as claimed in claim 1);
- (ii) **a thickness of the ruler blade** having a dimension **at least 2mm** (as claimed in claim 1);
- (iv) the **ruler blade being capable of standing out from the tape casing with a measuring length at least 10 feet in a self-sustaining manner so as to prevent the ruler blade from buckling by its own weight** (as claimed in claim 1);
- (v) **the width of the ruler blade in the flattened configuration being 41.27mm and the height of the ruler blade in the concave-convex configuration being 11.34mm** (as claimed in claim 2);
- (vi) **the width of the ruler blade in the flattened configuration being 41.29mm and said height of the ruler blade in the concave-convex configuration being 11.03mm** (as claimed in claim 3);
- (vii) **the width of the ruler blade in the flattened configuration being 41.29mm and the height of the ruler blade in said concave-convex configuration being 9.75mm** (as claimed in claim 4);

(viii) the ruler blade having a longitudinal central portion and two longitudinal side portions integrally extended from two sides of the central portion of the ruler blade respectively, **wherein each of the side portions of said ruler blade has a curvature smaller than a curvature of the central portion of said ruler blade**, wherein the central portion of the ruler blade has a width in the concave-convex configuration thereof having a dimension within a range of 20-22mm, a height in the concave-convex configuration thereof having a dimension within a range of 3-4mm (as claimed in claims 5-8);

(ix) the curvature of the central portion of the ruler blade being defined that a **central projecting radius of the central portion of the ruler blade is 15mm** and a **central projecting angle of the central portion of the ruler blade is 84°**, wherein the curvature of each of the side portion of the ruler blade is defined that a **side projecting radius of the side portion of the ruler blade is 30mm** and a **side projecting angle of the side portion of the ruler blade is 18.43°** (as claimed in claims 9-12);

(x) the curvature of the central portion of the ruler blade being defined that a **central projecting radius of the central portion of the ruler blade is 15mm** and a **central projecting angle of the central portion of the ruler blade is 84°**, wherein the curvature of each of the side portion of the ruler blade is defined that a **side projecting radius of the side portion of the ruler blade is 45mm** and a **side projecting angle of the side portion of the ruler blade is 12.3°** (as claimed in claims 13-16); and

(xi) the curvature of the central portion of the ruler blade is defined that a **central projecting radius of the central portion of the ruler blade is 18mm** and a **central projecting angle of the central portion of the ruler blade is 74°**, wherein the curvature of each of the side portion of the ruler blade is defined that a **side projecting radius of the side portion of the ruler blade is 45mm** and a **side projecting angle of the side portion of the ruler blade is 11.5°** (as claimed in claims 17-20).

Murray describes a tape measure having a blade of a thickness of 0.114-0.16mm, the blade having a width in a flattened configuration within a range of 23-28mm,

a height in a concave-convex configuration within a range of 6.35-10.16mm, side portions having the central portion having a radius of 15mm and a projecting angle of 84 degrees. Therefore, the blade is enabled to stand out accurately a length measured along the blade of at least 10.5 feet with a horizontal linear length of standout thereof being greater than 97% of the arcuate length of standout.

Accordingly, the tape measure is such a simple article of manufacture that merely includes (i) a tape casing having a receiving cavity and a guider opening, (ii) a retraction unit supported in the receiving cavity, and (iii) a ruler blade having an inner end attached to the retraction unit and an outer end stopped at the guider opening, adapted to slidably fold between a storage position and a measuring position. The primary objective of the tape measure is to provide a blade to extend its measuring length in a horizontal linear manner without buckling by its own weight. *No one needs a blade with shorter measuring length and will be buckled by its weight when the blade is extended from the housing.*

Murray's patent suggests the blade must contain the particular configuration, i.e. the thickness of the blade, the flattened configuration, the height in a concave-convex configuration, and the central portion of the blade, in order to stand out accurately a length measured along the blade of at least 10.5 feet with a horizontal linear length of standout thereof being greater than 97% of the arcuate length of standout. It is apparent that Murray fails to teach and anticipate the same recitation and limitation in the claims 1-20 of the instant invention of providing the configuration of the ruler blade. In addition, Murray does not disclose any range of ruler blade width in flattened configuration, the thickness of the ruler blade in the concave-convex configuration, the range of the central portion width, the range of the central portion height, the side projecting angle of the side portion, the radius of the central portion and the central projecting angle of the central portion. Therefore, the blade configuration taught by Murray does not equivalent to the blade configuration as claimed in the instant invention.

The Examiner appears to reason that since Murray teaches that the blade of the tape measure is adapted to be extended at least 10.5 feet with a particular

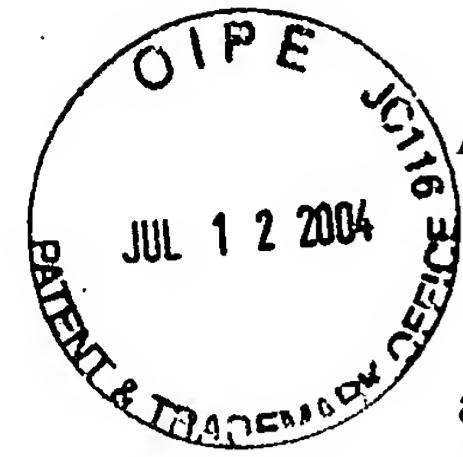
configuration, it would have been obvious to one skilled in the art to provide the particular ranges of the blade in order to increase the stability of the blade. But this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") *In re Laskowski*, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

In the present case, there is no such suggestion. Murray fails to suggest the above distinctive features (i) to (xi) as claimed in the instant invention. Accordingly, applicants believe that the rejection of claims 1 to 20 are improper and should be withdrawn.

The Cited but Non-Applied References

The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 1-20 at an early date is solicited.



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Amendment A (contd)

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Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

Date: 07/02/2004

Signature:
Person Signing: Steven Cheung